

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-7 and 20-26, drawn to an additive.

Group II, claim(s) 8-12, drawn to a hydraulic cement composition + additive.

Group III, claim(s) 13, drawn to a process of releasing Group I additive.

Group IV, claim(s) 14, drawn to a process of making hydraulic cement + additive.

Group V claim(s) 15, drawn to a process of making Group I additive.

Group VI, claim(s) 16-19, drawn to a process of using Group II composition (hydraulic cement + additive).

The inventions listed as Groups I do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: Claim 1 is anticipated or obvious over *Datta '563 B2*, *Kautz et al. '544*, *Vickers '05*, XP 000353374 abstract (chemical abstracts), XP 000374568 (chemical abstracts), WO 96/27695 A (Sandoz), WO 00/41981 A (Wain), XP 000374825 (Chem abstract), JP 61026545 A (Kubota LTD), or EP 0247773 A (Queensway).

Note: The italicized references were examiner cited. The remaining references were cited by EPO Examiner Gattinger in the PCT International Search Report.

All of the above cited references at least teach an additive (whether microsphere which meets definition of microporous carrier) or zeolite that is mixed/coated over admixture component thus anticipating applicants' invention. Even if not teaching the same particle size of microporous carrier/microsphere, control of the containment carrier/sphere size would have been obvious to one of ordinary skill in the art absent a

showing of criticality or unexpected results (See claims for all references above). See also col.15, lines 15-20 of Datta teaching synthetic microspheres and containment of liquids; Therefore, the invention of Group I provides no special technical contribution over the prior art and restriction is thus proper.

Note that the whichever product is elected, the corresponding method will be rejoined if the product claim elected (whether additive or cement+additive) is found allowable. The non-elected method claims to be rejoined should be amended to be same scope as elected product claim for expedited allowance should that occur. It is the examiner's position that all Groups of invention could potentially be examined together as well but that would require applicants statement for the record that all Groups of Invention are obvious variants. If they do not state so, the proper filing of a divisional application would appear to be the way to proceed.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one

or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double

patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Marcantoni whose telephone number is 571-272-1373. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Paul Marcantoni/  
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